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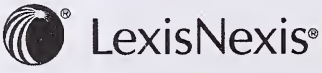

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TITLE 8

ENVIRONMENTAL LAW

(CHAPTERS 1-4 IN VOLUME 6)

CHAPTER 5

WATER POLLUTION CONTROL FACILITIES

Subchapter 9 — Long-Term Environmental Projects

8-5-902. Definitions and applicability.

For the purposes of this subchapter:

(1) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(2) "Department" means the Arkansas Department of Environmental Quality;

(3) "Long-term improvement project" or "project" means any remediation or reclamation project at closed or abandoned:

(A) Mineral extraction sites;

(B) Solid waste management units as defined pursuant to the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.;

(C) Oil and gas extraction sites;

(D) Brownfield Sites as defined in Acts 1995, No. 125 or as may be amended; and

(E) Hazardous substance sites listed on the National Priorities List, 42 U.S.C. § 9605, or state priority list, § 8-7-509(f), or as may be amended; and

(4) "Water quality standard" means standards developed through administrative rulemaking by the commission.

History. Acts 1997, No. 401, § 2; 1999, No. 1164, § 60; 2013, No. 1127, § 4.

Amendments. The 2013 amendment, in (3)(E), substituted "Priorities" for "Priority" and "§ 8-7-509(e)" for "§ 8-7-509(f)."

CHAPTER 6

DISPOSAL OF SOLID WASTES AND OTHER REFUSE

SUBCHAPTER.

Subchapter 2 — Solid Waste Management Act

SECTION.

8-6-203. Definitions.

As used in this subchapter:

(1) "Disposal site" means any place at which solid waste is dumped, abandoned, or accepted or disposed of for final disposition by incineration, landfilling, composting, or any other method;

(2)(A) "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may in the judgment of the Arkansas Department of Environmental Quality:

(i) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) Pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, or disposed of, or otherwise improperly managed.

(B) "Hazardous waste" includes without limitation waste that:

(i) Is radioactive;

(ii) Is toxic;

(iii) Is corrosive;

(iv) Is flammable;

(v) Is an irritant or a strong sensitizer; or

(vi) Generates pressure through decomposition, heat, or other means;

(3) "Household" means a single or multiple residence, hotel or motel, bunkhouse, ranger station, crew quarters, campground, picnic ground, and day-use recreation area;

(4)(A) "Household hazardous waste" means any hazardous waste derived from a household that is no longer under the control of the household.

(B) "Household hazardous waste" includes without limitation:

(i) Household cleaners;

(ii) Gasoline;

(iii) Paint, paint strippers, and paint thinners;

(iv) Motor oil; and

(v) Herbicides and pesticides, excluding antimicrobial and disinfectant products;

(5)(A) "Household hazardous waste storage or processing center" means a facility that stores, accumulates, or processes household hazardous waste.

(B) "Household hazardous waste storage or processing center" does not include:

(i) Hazardous waste treatment, storage, and disposal facilities permitted by the department under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.;

(ii) Agricultural operations as defined in § 8-6-509; or

(iii) De minimis amounts of household hazardous waste that have not been removed from the municipal solid waste stream;

(6) "Municipality" means a city of the first class, a city of the second class, or an incorporated town;

(7) "Person" means any individual, corporation, company, firm, partnership, association, trust, state agency, government instrumentality or agency, institution, county, city, town, municipal authority or trust, venture, or other legal entity, however organized;

(8)(A) "Pesticide" means a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or for use as a plant regulator, defoliant, or desiccant.

(B) "Pesticide" does not include:

(i) A new animal drug as defined in 21 U.S.C. § 321(v);

(ii) An animal drug that has been determined by regulation of the Secretary of the United States Department of Health and Human Services not to be a new animal drug; or

(iii) An animal feed as defined in 21 U.S.C. § 321(w);

(9) "Solid waste" means any garbage or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. § 1342, or source, special nuclear, or by-products material as defined by the Atomic Energy Act of 1954, 42 U.S.C. § 2011 et seq.;

(10) "Solid waste board" or "board" means a regional solid waste planning board or a solid waste service area board, or its successor, created under § 8-6-701 et seq.;

(11) "Solid waste management system" means the entire process of source reduction, storage, collection, transportation, processing, waste

minimization, recycling, and disposal of solid wastes by any person engaging in the process as a business or by any municipality, authority, trust, county, or by any combination of a municipality, authority, trust, or county; and

(12) "Transfer station" means a facility that is used to manage the removal, compaction, and transfer of solid waste from collection vehicles and other small vehicles to greater capacity transport vehicles.

History. Acts 1971, No. 237, § 3; A.S.A. 1947, § 82-2703; Acts 1991, No. 751, §§ 1, 2; 1995, No. 547, § 1; 1999, No. 1164, § 61; 2011, No. 1153, § 1; 2013, No. 1127, §§ 5, 6.

Amendments. The 2013 amendment substituted "Is radioactive" for "Radioactive" in (2)(B)(i); substituted "Is toxic" for "Toxic" in (2)(B)(ii); substituted "Is corrosive" for "Corrosive" in (2)(B)(iii); substituted "Is flammable" for "Flammable" in (2)(B)(iv); in (2)(B)(v), substituted "Is an" for "An" and "or" for "and"; substituted "Generates" for "That generate" in (2)(B)(vi); substituted "as defined in" for "under the Federal Food, Drug, and Cosmetic Act" in (8)(B)(i) and (8)(B)(iii); substituted "§ 321(v)" for "301 § 201(w)" in (8)(B)(i); and substituted "§ 321(w)" for "301 § 201(x)" in (8)(B)(iii).

Subchapter 6 — Solid Waste Management and Recycling Fund Act

Effective Dates. Acts 2012, No. 283, § 15: July 1, 2012. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2012 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2012 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2012."

Acts 2013, No. 1202, § 49: July 1, 2013. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2013 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2013 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2013."

8-6-602. Legislative findings and intent — Duties of department — Construction.

(a) The General Assembly finds that the solid waste needs of the state are not being met in an efficient, cost-efficient, and environmentally sound manner. The current reliance upon localized landfills is threatening to add Arkansas to those states experiencing solid waste management crises.

(b) The General Assembly concludes that, to the extent practicable, regional solid waste management systems should be developed which address solid waste needs in the context of cooperation and shared resources.

(c)(1) The General Assembly finds that recycling glass, plastic, cans, paper, and other materials will reduce the state's reliance upon landfills.

(2) Additionally, other solid waste reduction activities will help reduce the state's dependence on landfills, including:

(A) Using waste items as raw materials in a production process, such as adding shingles to asphalt mix for paving;

(B) Using waste items to produce an end product without recycling, such as returning wood chips to citizens as mulch;

(C) Using waste items as fuel, such as burning wood chips or tire chips in a waste-to-fuel process; or

(D) Other activities as approved by the department.

(3) The waste stream reduction activities described in subdivision (c)(2) of this section also curb littering, illegal dumping, and abate the environmental risks caused by current solid waste practices.

(4) The General Assembly therefore mandates that recycling shall be integrated as a component of any solid waste management plan required under the Arkansas Solid Waste Management Act, § 8-6-201 et seq., and that these recycling plans shall be implemented under the terms of this subchapter.

(d) The Arkansas Department of Environmental Quality and the Arkansas Pollution Control and Ecology Commission shall promulgate and implement policies, rules, regulations, and procedures for administering the terms of this subchapter.

(e) The terms and obligations of this subchapter shall be liberally construed so as to achieve remedial intent.

History. Acts 1989, No. 849, § 2; 1989, No. 934, § 2; 2011, No. 819, § 1; 2013, No. 1333, § 1.

Amendments. The 2013 amendment rewrote (d).

8-6-605. Solid Waste Management and Recycling Fund.

(a)(1) A Solid Waste Management and Recycling Fund is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

(2) The fund shall be administered by the Arkansas Department of Environmental Quality, which shall authorize distributions and administrative expenditures from the fund under this subchapter.

(3) In addition to all moneys appropriated by the General Assembly to the fund, there shall be deposited in the fund all landfill disposal fees collected pursuant to §§ 8-6-606 and 8-6-607, all moneys reimbursed to the department pursuant to § 8-6-610, federal government moneys designated to enter the fund, any moneys received by the state as a gift or donation to the fund, and all interest earned upon money deposited in the fund.

(4) No more than twenty percent (20%) of the moneys received annually into the fund shall be used by the department for the administration of a solid waste management and recycling program and for solid waste management compliance and enforcement activities at landfills and open dumps.

(b) There shall also be deposited into the fund all landfill disposal fees collected under § 8-6-612 to be used exclusively for computer and electronic equipment recycling activities as authorized in § 8-6-613.

History. Acts 1989, No. 849, § 5; 1989, No. 934, § 5; 2007, No. 512, § 1; 2013, No. 1333, § 2.

Amendments. The 2013 amendment, in (a)(2), substituted "distributions" for "grants" and "under" for "according to the provisions of"; and substituted "twenty percent (20%)" for "twenty five percent (25%)" in (a)(4).

8-6-607. Collection of fees.

Fees imposed under the separate provisions of this subchapter shall be collected as follows:

(1) Each landfill permittee and each transporter shall submit to the Arkansas Department of Environmental Quality on or before January 15, April 15, July 15, and October 15 of each year a quarterly report that accurately states the total weight or volume of solid waste received at the landfill or transported out of state during the quarter just completed;

(2) On or before January 15, April 15, July 15, and October 15 of each year, each landfill permittee and solid waste transporter shall pay to the department the full amount of disposal fees due for the quarter just completed;

(3) Except as provided in subdivisions (4) and (5) of this section, the disposal and transportation fees collected under this section shall be special revenues and shall be deposited in the State Treasury to the credit of the Solid Waste Management and Recycling Fund for administrative support of the State Marketing Board for Recyclables;

(4)(A) Twenty-five percent (25%) of the disposal fees collected from landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry shall be deposited into a special fund to be created on the books of the Treasurer of State, the Auditor of State, and the Chief

Fiscal Officer of the State and to be known as the "Marketing Board Fund".

(B) The Marketing Board Fund shall be administered by the department and used by the board for the administration and performance of the board's duties; and

(5) Beginning July 1, 2013, excluding the disposal fees that are to be deposited into the Marketing Board Fund under subdivision (4) of this section, the first one hundred fifty thousand dollars ($150,000) of the fees collected each fiscal year under this section shall be deposited into the State Treasury and credited to the Crime Information System Fund to be used exclusively for the scrap metal logbook program.

History. Acts 1989, No. 849, § 7; 1989, No. 934, § 7; 1991, No. 755, § 2; 1993, No. 1127, § 3; 1995, No. 511, § 2; 2012, No. 283, § 10; 2013, No. 1202, § 45.

Amendments. The 2012 amendment substituted "under" for "pursuant to" in the introductory language and in (3); substituted "subdivisions (4) and (5)" for "subdivision (4)" in (3); and added (5).

The 2013 amendment rewrote (5).

8-6-609. [Repealed.]

Publisher's Notes. This section concerning a grant program for the development of solid waste management plans was repealed by Acts 2013, No. 1333, § 3. The former section was derived from Acts 1989, No. 849, § 9; 1989, No. 934, § 9; 1991, No. 749, § 5; 1992 (1st Ex. Sess.), No. 8, § 2; 1993, No. 1030, § 1; 1995, No. 463, § 1; 1999, No. 428, § 1; 2001, No. 70, § 1; 2003, No. 1027, § 1; 2005, No. 1325, § 1; 2011, No. 819, §§ 3, 4.

8-6-610. Rules and regulations.

(a) The Arkansas Pollution Control and Ecology Commission may adopt reasonable rules and regulations necessary to implement this subchapter, including without limitation:

(1) Collecting fees; and

(2) Setting priorities for the administration of this subchapter.

(b) The rules and regulations shall be reviewed by the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the committees.

History. Acts 1989, No. 849, § 10; 1989, No. 934, § 10; 1991, No. 749, § 6; 1997, No. 179, § 4; 2001, No. 70, § 2; 2011, No. 819, § 5; 2013, No. 1333, § 4.

Amendments. The 2013 amendment deleted "Conditions imposed upon grant recipients" in the section heading; deleted (a)(2) and (a)(4) and redesignated the remaining subdivisions accordingly; deleted (b)(1)(B), (b)(2) and (c); and inserted "and regulations" in (b).

8-6-615. Distribution of funds to regional solid waste management districts.

(a)(1)(A) Funds collected under § 8-6-607 and deposited into the State Treasury to the credit of the Solid Waste Management and Recycling Fund, less up to twenty percent (20%) for administrative

support for the Arkansas Department of Environmental Quality, shall be allocated annually to each of the approved regional solid waste management districts utilizing a combination of the two (2) methods stated in subsections (b) and (c) of this section.

(B) Fifty percent (50%) of the funds shall be determined using the method provided in subsection (b) of this section, and fifty percent (50%) shall be determined using the method provided in subsection (c) of this section.

(C) The total figures obtained from each method shall be combined to arrive at each regional solid waste management district's fund distribution.

(b)(1)(A) The department shall determine the amount of funds within each planning and development district organized under § 14-166-201 et seq., and recognized by the Governor, based on the same distribution as general revenue support is distributed to the planning and development districts in the current fiscal year.

(B) The department shall adjust the distribution described in subdivision (b)(1)(A) of this section within the planning and development districts to coincide with the boundaries of the regional solid waste management districts by determining each county's share of the funds available within each planning and development district.

(C) Each county's share shall be based on the proportion that each county's population bears to the total population in the planning and development district to which the county is assigned, multiplied by the amount of funds determined to be available within the planning and development district.

(D) The county's proportional share as determined under this subdivision (b)(1) shall be added to all other counties' shares within the same regional solid waste management district.

(2) The formula to be used under this subsection is as follows:

(A) Divide fifty percent (50%) of the total remaining funds equally by the eight (8) regional planning and development districts;

(B) Multiply the quotient obtained under subdivision (b)(2)(A) of this section by the most recent federal decennial census population of each county; and

(C)(i) Divide the product obtained under subdivision (b)(2)(B) of this section by the planning and development district population in which the county is located to determine the portion per county.

(ii) Individual county portions are grouped and totaled by each new regional solid waste management district to determine each regional solid waste management district's allocation.

(c)(1) The remaining fifty percent (50%) of the funds shall be based on the ratio of the district's 2010 or current decennial census population divided by the most recent federal decennial census state population.

(2) The formula to be used under this subsection is as follows:

(A) Divide each solid waste management district's total population by the state's most recent federal decennial census population; and

(B) Multiply the quotient obtained under subdivision (c)(2)(A) of this section by the total remaining funds to determine each regional solid waste management district's allocation.

History. Acts 2013, No. 1333, § 5.

Subchapter 7 — Regional Solid Waste Management Districts and Boards

8-6-703. Creation of districts and boards — Members of boards.

(a)(1)(A) The eight (8) regional solid waste planning districts created by Acts 1989, No. 870, and each solid waste service area created pursuant to Acts 1989, No. 870, are renamed regional solid waste management districts.

(B) Each regional solid waste management district shall be governed by a regional solid waste management board.

(2) The boundaries of a regional solid waste management district may be modified and new regional solid waste management districts may be created pursuant to § 8-6-707.

(b)(1) Each regional solid waste management board shall be composed of representatives of:

(A) The counties within the regional solid waste management district;

(B) All cities of the first class within the regional solid waste management district;

(C) All cities with a population over two thousand (2,000) according to the most recent federal decennial census within the regional solid waste management district;

(D) The largest city of each county within the regional solid waste management district; and

(E) Any city that holds a position on any regional solid waste management board on or after January 1, 2010, within the regional solid waste management district.

(2) The county judge of each county within the regional solid waste management district and the mayor of each city entitled to a representative in the regional solid waste management district shall serve on the board, unless the county judge or mayor elects instead to appoint a member as follows:

(A) The county judge, with confirmation by the quorum court of each county within the regional solid waste management district, shall appoint one (1) member to the board; and

(B) The mayor, with confirmation by the governing body of each city entitled to a representative in the regional solid waste management district, shall appoint one (1) member.

(c)(1) Each board shall have a minimum of five (5) members.

(2) If the number of members serving under subsection (b) of this section is less than five (5), additional members necessary to make the total number equal five (5) shall be appointed by mutual agreement of the other board members and shall represent the general public within the regional solid waste management district.

(3) Appointed board members shall serve at the pleasure of the appointing body and a minimum term of one (1) year.

(4) Vacancies shall be filled for any unexpired term of an appointed member in the same manner as provided in subsection (b) of this section and subdivision (c)(2) of this section.

(5)(A) A majority of the membership of the board in person or represented by proxy shall constitute a quorum.

(B) A majority vote of those members present shall be required for any action of the board.

(6) Each board shall annually select a chair.

History. Acts 1989, No. 870, § 3; 1991, No. 752, §§ 2, 3; 2003, No. 215, § 1; 2011, No. 884, § 1; 2013, No. 316, § 1.

Amendments. The 2013 amendment inserted "regional solid waste management" preceding "district" throughout the section; and added "within the regional solid waste management district" at the end of (b)(1)(B), (b)(1)(C) and (b)(1)(D).

8-6-707. Creation of new regional districts.

(a)(1)(A) After notification of the appropriate regional board or boards, the Arkansas Pollution Control and Ecology Commission may designate a county or counties within each regional solid waste management district or counties within two (2) or more districts as a new district pursuant to the limitations of this section.

(B) New districts shall be designated for purposes that address local exigencies, needs, and other requirements of this subchapter.

(C) A district shall only be composed of whole county jurisdictions, and each district shall contain more than one (1) county unless that county has a population of:

(i)*(a)* At least fifty thousand (50,000) according to the most recent federal decennial census.

(b) However, a single-county district that has been approved under this section shall not cease to be a valid district under this section if the population of the single county composing the district is determined to be less than fifty thousand (50,000) according to a decennial census occurring after the approval of the single-county district; or

(ii) At least twenty-five thousand (25,000) according to the most recent federal decennial census and the county is served by one (1) county sanitation authority under § 14-233-104.

(2) Commission approval of district boundaries shall be sought and obtained pursuant to administrative procedures promulgated by the commission.

(b)(1) Counties and municipalities included in a new or revised district shall cease to be members of any other district.

(2) The term of a regional board member representing a county or municipality shall immediately expire upon the inclusion of the county or municipality within a new regional solid waste management district.

(c) After notification of the appropriate regional boards, the commission, upon the request of a county or district, may transfer a county into an existing district.

History. Acts 1989, No. 870, § 9; 1991, No. 752, § 2; 1991, No. 786, § 7; 2013, No. 371, § 1; 2013, No. 1244, § 1.

Amendments. The 2013 amendment deleted "regional solid waste management" throughout (a); inserted "regional solid waste management" following "counties within each" in (a)(1)(A); redesignated second paragraph as present (a)(1)(C)(i)(a) in (a)(1)(C); and inserted present (a)(1)(C)(i)(b) and present (a)(1)(C)(ii).

The 2013 amendment by No. 371 rewrote (a)(1)(C).

The 2013 amendment by No. 1244 rewrote (a).

8-6-717. [Repealed.]

Publisher's Notes. This section, concerning solid waste management plans was repealed by Acts 2013, No. 1153, § 2. The former section was derived from Acts 1991, No. 752, § 2.

Subchapter 19 — Statewide Solid Waste Management Plan Act

SECTION.
8-6-1904. Development and implementation.

8-6-1904. Development and implementation.

(a) The Arkansas Department of Environmental Quality shall develop the Statewide Solid Waste Management Plan to establish minimum requirements for all regional solid waste management plans, including requirements for:

(1) Strategic planning;

(2) Reporting;

(3) Public notice and participation;

(4) Services; and

(5) Solutions to problems and issues.

(b) Within one (1) year after the Statewide Solid Waste Management Plan becomes final, each regional solid waste management board shall develop a solid waste management plan for departmental review and approval, which includes the minimum requirements contained in the Statewide Solid Waste Management Plan. This new plan shall replace any existing regional solid waste management plan previously developed.

(c) Failure of any regional board to develop or implement any requirement contained in the Statewide Solid Waste Management Plan shall subject the regional board to:

(1) The penalty and enforcement provisions contained in § 8-6-204; or

(2) Denial, discontinuation, or reimbursement of any funding administered by the department to the regional board.

(d) The Arkansas Pollution Control and Ecology Commission may adopt reasonable rules and regulations necessary to implement or effectuate the purposes and intent of this subchapter.

History. Acts 2001, No. 1376, § 1; 2013, No. 1153, § 3.

Amendments. The 2013 amendment deleted "pursuant to § 8-6-717" at the end of (b).

CHAPTER 7

HAZARDOUS SUBSTANCES

SUBCHAPTER.

8. Regulated Substance Storage Tanks.
9. Petroleum Storage Tank Trust Fund Act.

Subchapter 8 — Regulated Substance Storage Tanks

SECTION.

8-7-801. Definitions and exceptions.

As used in this subchapter:

(1)(A) "Aboveground storage tank" means any one (1) or a combination of containers, vessels, and enclosures located aboveground, including structures and appurtenances connected to them, whose capacity is greater than one thousand three hundred twenty gallons (1,320 gals.) and not more than forty thousand gallons (40,000 gals.) and that is used to contain or dispense motor fuels, distillate special fuels, or other refined petroleum products.

(B) Such term does not include mobile storage tanks used to transport petroleum from one location to another or those used in the production of petroleum or natural gas;

(2) "Adjacent property owner" means any person, other than an owner or operator, owning an interest in any property affected by a release;

(3) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(4) "Department" means the Arkansas Department of Environmental Quality;

(5) "Operator" means any person in control of or having responsibility for the daily operation of an underground storage tank;

(6)(A) "Owner" means:

(i) In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances; and

(ii) In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such tank immediately before the discontinuation of its use.

(B) "Owner" does not include any person who, without participation in the management of an underground storage tank, holds indicia of ownership primarily to protect a security interest in the tank;

(7) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, venture, or municipal, state, or federal government or agency, or any other legal entity, however organized;

(8) "Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit (60° F) and fourteen and seven-tenths pounds (14.7 lbs.) per square inch absolute);

(9) "Regulated substance" means:

(A) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but not including any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976; and

(B) Petroleum;

(10)(A) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into groundwater, surface water, or subsurface soils.

(B) "Release" does not include releases that are permitted or authorized by the department or by federal law;

(11) "Release site property owner" means a person, other than an owner or operator, that owns an interest in a property on which a release has occurred;

(12) "Secondary containment" means a release prevention and release detection system for an underground storage tank or piping, or both, that provides an inner barrier and an outer barrier and an interstitial space between the two (2) barriers for monitoring to detect the presence of a leak or release of regulated substances from the underground storage tank or piping, or both;

(13) "Storage tank" means an aboveground storage tank or underground storage tank as defined in this subchapter; and

(14) "Underground storage tank" means any one (1) or combination of tanks, including underground pipes connected thereto, which is or has been used to contain an accumulation of regulated substances, and

the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground. Such term does not include any:

(A) Farm or residential tank of one thousand one hundred gallons (1,100 gals.) or less capacity used for storing motor fuel for noncommercial purposes;

(B) Tank used for storing heating oil for consumptive use on the premises where stored;

(C) Septic tank;

(D) Pipeline facility, including gathering lines, regulated under:

(i) The Natural Gas Pipeline Safety Act of 1968; and

(ii) The Hazardous Liquid Pipeline Safety Act of 1979;

(E) Surface impoundment, pit, pond, or lagoon;

(F) Storm water or wastewater collection system;

(G) Flow-through process tank;

(H) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(I) Storage tank situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

(J) Pipes connected to any tank that is described in subdivisions (14)(A)-(I) of this section.

History. Acts 1989, No. 172, § 1; 1993, No. 810, § 1; 1995, No. 427, § 1; 1995, No. 436, § 1; 1999, No. 600, § 1; 1999, No. 1164, § 105; 2001, No. 1471, § 1; 2007, No. 264, § 1; 2009, No. 282, § 1; 2013, No. 1509, § 1.

Amendments. The 2013 amendment inserted (11).

8-7-807. Responsibility and liability of owner.

(a)(1) Upon a determination that a release of a regulated substance from a storage tank has occurred, the owner or operator shall notify the Arkansas Department of Environmental Quality. The owner or operator shall immediately undertake to collect and remove the release and to restore the area affected in accordance with the requirements of this subchapter.

(2) However, the obligation of an owner or operator of an aboveground storage tank to notify the department or undertake the other activities required in this subsection shall not exceed and will be limited to the existing requirements of any other applicable federal or state statutes or regulations.

(b) If the owner or operator fails to proceed as required in subsection (a) of this section, the owner and operator shall be liable to the department for any costs incurred by the department for undertaking corrective action or enforcement action with respect to the release of a regulated substance from a storage tank.

(c)(1)(A) A release site property owner or adjacent property owner shall not unduly impede or interfere with the efforts of the department or the owner or operator to undertake investigation, site

assessment, or corrective action in accordance with the requirements of this subchapter.

(B) The department or the owner, as defined in § 8-7-801, or operator shall undertake investigation, site assessment, or corrective action, as approved by the department after notice to the affected parties, that minimizes to the most reasonable extent practicable any interference with the release site property owner's or adjacent property owner's use and enjoyment of the property, taking into consideration the relevant private and commercial interests and the release site property owner's or adjacent property owner's need for access.

(2)(A) A release site property owner or adjacent property owner that violates subdivision (c)(1) of this section is liable for any investigation, site assessment, or corrective action costs resulting from the violation.

(B) If the release site property owner or adjacent property owner denies access to property when the access is reasonably necessary for investigation, site assessment, or corrective action undertaken by the department or by the owner or operator under a department directive, order, or approved corrective action plan, the department may order the release site property owner or adjacent property owner to undertake the portion of investigation, site assessment, or corrective action that was prohibited by the denial of access.

(3) This section does not impair any right of the release site property owner or adjacent property owner to seek equitable or legal remedies, including without limitation claims for trespass, compensation as the result of eminent domain, damages for temporary or permanent takings of rights in land, contribution, and any other right or remedy allowed by state or federal law or regulation.

(d)(1) Any party found liable for any costs or expenditures recoverable under this subchapter which establishes by a preponderance of the evidence that only a portion of such costs or expenditures are attributable to his or her actions shall be required to pay only for that portion.

(2) If the trier of fact finds the evidence insufficient to establish each party's portion of costs or expenditures, the court shall apportion the costs or expenditures, to the extent practicable, according to equitable principles, among the responsible parties.

(3) In any action under this subchapter, no responsible party shall be liable for more than that party's apportioned share of the amount of costs or expenditures recoverable for the site.

(4) Any expenditures required under this subchapter made by a responsible party, before or after suit or before or after a complaint has been filed with or heard by the Arkansas State Claims Commission, shall be credited toward any apportioned share.

(e) Any costs recovered by the department under this section shall be used to reimburse the Petroleum Storage Tank Trust Fund in the amount utilized by the department and the balance, if any, deposited into the Regulated Substance Storage Tank Program Fund.

History. Acts 1989, No. 172, § 7; 1993, No. 810, § 5; 1999, No. 600, § 2; 2013, No. 1509, § 2.

Amendments. The 2013 amendment rewrote (c).

Subchapter 9 — Petroleum Storage Tank Trust Fund Act

8-7-905. Petroleum Storage Tank Trust Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Petroleum Storage Tank Trust Fund", hereinafter referred to as the "fund".

(b) The fund will be administered by the Director of the Arkansas Department of Environmental Quality, who shall make disbursements from the fund as authorized by this subchapter.

(c) The fund shall consist of gifts, grants, donations, and such other funds as may be made available by the General Assembly, including all interest earned upon money deposited in the fund, fees assessed under this subchapter, any moneys recovered by the Arkansas Department of Environmental Quality, the proceeds of bonds issued by the Arkansas Development Finance Authority for the benefit of the fund, and any other moneys legally designated for the fund.

(d) Moneys in the fund may be expended by the director solely for the following purposes, as limited by the provisions of subsection (e) of this section:

(1) The state share mandated by the federal Resource Conservation and Recovery Act of 1976;

(2) To pay costs incurred by the Arkansas Pollution Control and Ecology Commission, the director, the Attorney General, or the Advisory Committee on Petroleum Storage Tanks in the performance of their duties under this subchapter;

(3) To pay reimbursement to owners and operators for taking corrective action or to pay third parties for compensatory damages caused by accidental releases from qualified storage tanks;

(4) To pay reasonable and necessary costs and expenses of the department for taking corrective action caused by accidental releases from a storage tank of unknown ownership or when corrective action is not commenced by the owner or operator in a timely manner;

(5)(A) To reimburse owners and operators in the vicinity of the release for performing short-term testing or monitoring which is in addition to that required by the department's rules and regulations if the department has a reasonable basis for believing that the petroleum underground storage tank or tanks may be the source of the release.

(B) The owners and operators of petroleum underground storage tanks, including out-of-service and nonoperational tanks, not found

to be the source of the release and who cooperate with the department may apply to the fund for reimbursement for such testing and monitoring costs, not including lost managerial time or loss of revenues because of temporary business closure; and

(6) To reimburse a consultant under § 8-7-907(k) for the purchase of equipment needed to undertake corrective action.

(e) Notwithstanding any other provisions of this subchapter, the director, upon finding that a release may present an imminent and substantial hazard to the health of persons or to the environment and that an emergency exists requiring immediate action to protect the public health and welfare or the environment, may, without receiving prior advice from the committee, issue an order reciting the existence of such an imminent hazard and emergency and ordering a disbursement or reimbursement of up to fifty thousand dollars ($50,000) from the fund so that such action may be taken as he or she determines to be necessary to protect the health of such persons or the environment and to meet the emergency.

(f)(1) No expenditure from the fund shall be made for expenses for retrofitting or replacement of petroleum storage tanks.

(2) No expenditure from the fund pursuant to subdivisions (d)(3) and (5) of this section shall be made for attorney's fees.

(g) The liability or obligation of the fund is not the liability or obligation of the State of Arkansas. However, this subsection shall not be construed as relieving the fund of any liability or obligation prescribed in this subchapter upon the entry of a valid court order or valid final order of the Arkansas State Claims Commission establishing a judgment against any state agency, board, department, or commission or where a settlement agreement has been reached arising from third-party claims against any state agency, board, department, or commission where the state agency, board, department, or commission is determined to be the owner or operator.

(h) Nothing in this subchapter shall be construed to abrogate or waive the provisions of Arkansas Constitution, Article 5, § 20.

(i)(1) An owner or operator who considers himself or herself injured in his or her business, person, or property by a final decision of the director or the director's delegatee under this subchapter may appeal the decision to the Arkansas Pollution Control and Ecology Commission within thirty (30) days after the date of the final decision of the director or the director's delegatee.

(2) The procedures of the department and the Arkansas Pollution Control and Ecology Commission for issuance of rules and regulations, conduct of hearings, notice, power of subpoena, right of appeal, presumptions, finality of actions, and related matters shall be as provided in §§ 8-4-202, 8-4-210 — 8-4-214, and 8-4-218 — 8-4-229, and in rules and regulations applicable to administrative procedures of the department and the Arkansas Pollution Control and Ecology Commission to the extent they are not in conflict with the provisions of this subchapter.

History. Acts 1989, No. 173, § 3; 1989 (3rd Ex. Sess.), No. 65, §§ 3, 4; 1991, No. 615, § 1; 1993, No. 951, § 4; 1995, No. 1054, § 2; 1997, No. 641, § 3; 2001, No. 206, § 1; 2003, No. 1114, § 2; 2013, No. 406, § 1.

Amendments. The 2013 amendment added (d)(6).

8-7-907. Payments for corrective action.

(a)(1) No payment for corrective action shall be paid from the Petroleum Storage Tank Trust Fund until the owner or operator has expended seven thousand five hundred dollars ($7,500) on corrective action for the occurrence, except in cases in which the Director of the Arkansas Department of Environmental Quality is using emergency authority under § 8-7-905(e). It is the intent of the General Assembly that this initial level of expenditure be considered the equivalent of an insurance policy deductible.

(2) Owners or operators of underground storage tanks must demonstrate financial responsibility for the seven-thousand-five-hundred-dollar deductible for corrective actions.

(b) Payment for corrective action shall not exceed one million five hundred thousand dollars ($1,500,000) per occurrence.

(c) All payments for corrective action expenses of the owner or operator shall be made only following proof that:

(1) At the time of discovery of the release, the owner or operator had paid all fees required under state law or regulations applicable to petroleum storage tanks;

(2) The corrective action expenses submitted for reimbursement consist of items and amounts that are in accord and compliant with Arkansas Department of Environmental Quality regulations; and

(3) The owner or operator cooperated fully with the department in corrective action to address the release.

(d) Payment for corrective action may be denied if the storage tank owner or operator fails to report a release as required by regulation promulgated by the Arkansas Pollution Control and Ecology Commission, and the failure to report the release causes a delay in the corrective action that contributes to an adverse impact to the environment.

(e)(1) The commission may provide through rule and regulation for interim payments for corrective action.

(2) Interim payments shall be subject to these limitations:

(A) Proof of compliance with the requirements of subdivisions (c)(1)-(3) of this section must be provided;

(B) Specific assurances must be provided that an approved corrective action plan, department directive, or order is being implemented and followed to date; and

(C)(i) Interim payments shall consist of payment of an amount not to exceed ninety percent (90%) of one million five hundred thousand dollars ($1,500,000).

(ii) The remaining ten percent (10%) shall be released only upon final payment for corrective action concerning the occurrence.

(f)(1) In the event moneys are expended from the fund for corrective action and the owner or operator was not at the time of the occurrence eligible to receive reimbursement for corrective action, as defined by this subchapter and regulations promulgated under this subchapter, the department may recover from the owner or operator the amount of moneys expended from the fund for corrective action by filing an action in the appropriate circuit court or by using the administrative procedures set forth in § 8-7-804.

(2)(A) The department also has a right of subrogation:

(i) To any insurance policies in existence at the time of the occurrence to the extent of any rights the owner or operator of a site may have had under that policy; and

(ii) Against any third party who caused or contributed to the occurrence.

(B) The right of subrogation shall apply to sites where corrective action is taken by:

(i) Owners or operators; or

(ii) The department.

(C) As used in this subsection, "third party" does not include a former owner or operator of the site where corrective action is taken.

(g)(1) Unknown petroleum storage tanks that have satisfied the requirements of subdivisions (c)(1)-(3) of this section shall be eligible for reimbursement for corrective action as provided by this section if:

(A) The unknown petroleum storage tank is discovered while removing, upgrading, or replacing a petroleum storage tank meeting the requirements of subsection (c) of this section or while performing petroleum investigation or corrective action activities required by federal or state laws and the petroleum storage tank meeting the requirements of subsection (c) of this section is located on the same property or facility; or

(B) The unknown petroleum storage tank is located on a right-of-way purchased by a city, county, or state governmental agency or entity and is discovered during construction in such a right-of-way.

(2) Eligibility for reimbursement of unknown petroleum storage tanks will be conditioned on the payment of three hundred seventy-five dollars ($375) to the department.

(h) If the owner or operator is found to have been in noncompliance with any state and federal laws and regulations relating to storage tanks at the time of the occurrence, the department may assess a penalty in accordance with its applicable policies and procedures.

(i)(1) An owner or operator determined to be eligible for payment for corrective action for a release from a qualified storage tank may transfer the eligibility to a subsequent owner or operator of the storage tank if the department determines that the subsequent owner or operator has the financial and legal capacity to complete the corrective action and the subsequent owner or operator agrees in writing to assume responsibility for corrective action.

(2) A transfer under subdivision (i)(1) of this section shall not affect the potential liability of the owner or operator for undertaking any required corrective action.

(3) The removal of the storage tank after initiation of corrective action shall not bar the transfer of eligibility as provided in subdivision (i)(1) of this section.

(j)(1) A lender or secured creditor that holds ownership in a storage tank primarily to protect a security interest on the storage tank or the facility on which it is located, or both, is eligible for payment for corrective action if the lender or secured creditor assumes responsibility for completing the corrective action of a release from a qualified storage tank.

(2) If an owner or operator is performing corrective action to the department's satisfaction, a lender or secured creditor is not eligible to assume responsibility for corrective action or to receive payment for corrective action.

(3) Subdivisions (j)(1) and (j)(2) of this section do not affect the liability of the owner or operator for undertaking any required corrective action.

(k)(1) The Arkansas Pollution Control and Ecology Commission shall provide through rule and regulation for a procedure under which an owner or operator or a consultant can be eligible for payment for the purchase of equipment needed for undertaking corrective action.

(2) The procedure adopted under subdivision (k)(1) of this section shall include without limitation:

(A) Depreciation schedules;

(B) Reasonable rent as appropriate;

(C) Evaluation of residual value of equipment; and

(D) Providing for reversion of equipment to the department if the responsibility for the maintenance or payment for the equipment is not met.

(3) The eligibility for payment of a consultant applies only to this subsection.

History. Acts 1989, No. 173, § 7; 1989 (3rd Ex. Sess.), No. 65, §§ 8, 9; 1993, No. 951, § 6; 1997, No. 642, § 1; 1997, No. 1027, § 1; 1999, No. 599, § 1; 2001, No. 1471, §§ 4, 5; 2003, No. 1114, § 3; 2005, No. 670, § 2; 2005, No. 1678, § 1; 2009, No. 282, §§ 4, 5; 2011, No. 809, § 1; 2013, No. 406, § 2.

Amendments. The 2013 amendment substituted "this subsection" for "subdivision (k)(1) of this section" in (k)(3).

8-7-908. Third-party claims.

(a)(1) No payment to any owner or operator against whom a third-party claim is brought for compensatory damages shall be paid from the Petroleum Storage Tank Trust Fund until the owner or operator has expended seven thousand five hundred dollars ($7,500) on third-party claims for the occurrence, except in cases in which:

(A) The Director of the Arkansas Department of Environmental Quality is using his or her emergency authority under § 8-7-905(e); or

(B) The owner or operator has been discharged under the United States Bankruptcy Code or is determined by a court to be insolvent.

(2) It is the intent of the General Assembly that this initial level of expenditure be considered the equivalent of an insurance policy deductible.

(3) Owners and operators of underground storage tanks must demonstrate financial responsibility for the seven-thousand-five-hundred-dollar deductible for third-party liability costs.

(b) Payment for third-party claims shall not exceed one million dollars ($1,000,000) per occurrence.

(c) All payments for third-party claims shall be made only following proof that:

(1) At the time of the occurrence, the owner or operator was in substantial compliance with the financial responsibility requirements;

(2) At the time of discovery of the release, the owner or operator had paid all fees required under state law or regulations applicable to petroleum storage tanks; and

(3) A valid final court order or valid final order of the Arkansas State Claims Commission establishing a judgment against the owner or operator for compensatory damages caused by an accidental release from a qualified storage tank has been entered.

(d)(1)(A) Any owner or operator against whom a third-party claim is filed in court or in the Arkansas State Claims Commission shall give written notice of the claim to the Arkansas Department of Environmental Quality no later than twenty (20) days after service of summons or receipt of notification of the claim from the Arkansas State Claims Commission.

(B) As a condition of eligibility, an owner or operator shall cooperate with and assist the department and, if applicable, the Attorney General's office in connection with the third-party claim.

(C) At a minimum, the cooperation shall include active participation by the owner or operator throughout the litigation and providing assistance as required by the department or the Attorney General's office during resolution of a third-party claim.

(D) In determining compliance with subdivisions (d)(1)(B) and (C) of this section, the director shall consider the owner's or operator's financial condition.

(2) Upon receipt of the notice, the department shall immediately notify the Attorney General, who shall have the right to intervene in any such lawsuit or proceeding in order to protect the interests of the state in the fund.

(3) Payment of third-party claims from the fund may be denied for any owner or operator who fails to give the department notice as required herein.

(e)(1) The Arkansas Pollution Control and Ecology Commission may provide through rules or regulations for payments for third-party

claims under settlement agreements between the parties without entry of a final court order or Arkansas State Claims Commission order.

(2) Settlement payments for third-party claims shall be subject to these limitations:

(A) Proof of compliance with the requirement of subdivisions (c)(1) and (2) of this section must be provided;

(B) Specific assurances, such as dismissal with prejudice of the cause of action, that payment shall release the owner or operator from all future liability to the third-party claimant for this occurrence must be provided; and

(C) The director must determine that litigation would result in costs to the fund which would exceed the settlement amount and, therefore, it would be in the best interests of the fund to pay the settlement amount.

(f)(1) In the event moneys are expended from the fund for third-party claims and the owner or operator was not at the time of the occurrence in substantial compliance, as defined by this subchapter and regulations promulgated under this subchapter, the department may recover from the owner or operator the amount of moneys expended from the fund for the third-party claim by filing an action in the appropriate circuit court or by using the administrative procedures set forth in § 8-7-804.

(2)(A) The department also has a right of subrogation:

(i) To any insurance policies in existence at the time of the occurrence to the extent of any rights the owner or operator of a site may have had under that policy; and

(ii) Against any third party who caused or contributed to the occurrence.

(B) The right of subrogation shall apply to sites where corrective action is taken by:

(i) Owners or operators; or

(ii) The department.

(C) As used in this subsection, "third party" does not include a former owner or operator of the site where corrective action is taken.

(g)(1) Unknown petroleum storage tanks that have satisfied the requirements of subdivision (c)(3) of this section shall be eligible for reimbursement for third-party claims as provided by this section if:

(A) The unknown petroleum storage tank is discovered while removing, upgrading, or replacing a petroleum storage tank meeting the requirements of subsection (c) of this section or while performing petroleum investigation or corrective action activities required by federal or state laws and the petroleum storage tank meeting the requirements of subsection (c) of this section is located on the same property or facility; or

(B) The unknown petroleum storage tank is located on a right-of-way purchased by a city, county, or state governmental agency or entity and is discovered during construction in the right-of-way.

(2) Eligibility for reimbursement of unknown petroleum storage tanks will be conditioned on the payment of three hundred seventy-five dollars ($375) to the department.

(h)(1) An owner or operator determined to be eligible for payment for third-party claims for a release may transfer the eligibility to an owner or operator that acquires the storage tank if the department determines that the subsequent owner or operator has the financial and legal capacity and has assumed in writing the responsibility for third-party liability.

(2) A transfer under subdivision (h)(1) of this section does not affect the potential liability of the owner or operator for payment of compensatory damages to a third party.

(3) The removal of the storage tank after initiation of corrective action shall not bar the transfer of eligibility as provided in (h)(1).

History. Acts 1989, No. 173, § 8; 1989 (3rd Ex. Sess.), No. 65, §§ 10-13; 1993, No. 951, § 7; 1997, No. 641, § 5; 1997, No. 642, § 2; 1997, No. 1027, § 2; 1999, No. 599, § 2; 2003, No. 1114, §§ 4-6; 2005, No. 1678, § 2; 2011, No. 809, § 2; 2013, No. 406, § 3.

Amendments. The 2013 amendment rewrote (h)(2).

CHAPTER 10

POLLUTION PREVENTION

SUBCHAPTER.

Subchapter 4 — Public Surface Water Supply Protection Act

SECTION.

8-10-401. Title.

This subchapter shall be known and may be cited as the "Public Surface Water Supply Protection Act".

History. Acts 2013, No. 1484, § 1.

8-10-402. Legislative findings and purpose.

(a) The General Assembly finds that:

(1) Clean water resources are essential to being able to effectively provide economic opportunities in the state; and

(2) Protecting the water resources of the state will improve Arkansas's ability to promote the abundant assets of the state as the land of opportunity and encourage the development of additional economic opportunities in Arkansas.

(b) The purpose of this subchapter is to encourage petroleum pipeline owners and operators to work with the state to protect and improve water resources and economic opportunities in Arkansas by reducing the risk of pipeline petroleum spills into the public surface water drinking supplies in the state.

History. Acts 2013, No. 1484, § 1.

8-10-403. Definitions.

As used in this subchapter:

(1) "Petroleum" means crude oil, gasoline, or any other nonvaporous petroleum product carried in a pipeline that crosses into the watershed of a public surface water supply;

(2)(A) "Public surface water supply" means a body of water, including without limitation a river, lake, reservoir, or other impoundment and the watershed that drains into the river, lake, reservoir, or other impoundment that is owned, leased, or otherwise used by a public water provider.

(B) "Public surface water supply" does not include water contained in an aquifer or aboveground water storage tank;

(3)(A) "Public water provider" means an entity that provides water for domestic, business, or industrial purposes.

(B) "Public water provider" includes without limitation a consolidated waterworks system created under the Consolidated Waterworks Authorization Act, § 25-20-301 et seq., city government, county government, regional water district, and nonprofit organization; and

(4) "Watercourse" means a river, stream, bayou, cove, or canal.

History. Acts 2013, No. 1484, § 1.

8-10-404. Cut-off valve and training.

For each petroleum pipeline that crosses a watercourse that empties into a public surface water supply above ground or below ground, the owner or operator of the petroleum pipeline is encouraged to:

(1) Install a cut-off valve capable of:

(A) Automatically sensing a loss of petroleum flowing in the petroleum pipeline; and

(B) Automatically and manually cutting off the flow of petroleum on each side of each watercourse that discharges into a public surface water supply; and

(2) Provide annually to critical staff for the petroleum pipeline operator, the public water provider, and state and local emergency response providers either direct training or funding for training by a third party.

History. Acts 2013, No. 1484, § 1.

8-10-405. Risk mitigation and response plan.

(a) An owner or operator of a petroleum pipeline is encouraged to create a detailed risk mitigation and response plan for each petroleum pipeline in the watershed of a public surface water supply.

(b) An effective risk mitigation and response plan under subsection (a) of this section:

(1) States clearly each party responsible for implementing the risk mitigation and response plan on behalf of the petroleum pipeline owner or operator; and

(2) Includes at least the following:

(A) Quarterly visual inspection of each petroleum pipeline;

(B) An early notification system for each relevant public water provider;

(C) Plans for the construction of containment berms;

(D) Detailed information on the product being carried in each petroleum pipeline;

(E) The annual training requirements for emergency response personnel; and

(F) A safety-related capital improvement plan that includes without limitation the following:

(i) The removal of aboveground petroleum pipeline crossings;

(ii) The installation of additional valves and valve controls; and

(iii) The construction of additional response structures and facilities.

(c) The petroleum pipeline owner or operator is encouraged to submit any risk mitigation and response plan developed under this section to the Department of Health and the appropriate public water provider for comment.

History. Acts 2013, No. 1484, § 1.

CHAPTER 15

PROPERTY ASSESSED CLEAN ENERGY ACT

8-15-101. Title.

This chapter shall be known and may be cited as the "Property Assessed Clean Energy Act".

History. Acts 2013, No. 1074, § 1.

8-15-102. Definitions.

As used in this chapter:

(1)(A) "Bond" means a revenue bond or note issued under this chapter.

(B) "Bond" includes any other financial obligation authorized by this chapter, the laws of this state, or the Arkansas Constitution;

(2) "District" means a property assessed energy improvement district established in this state by law for the express purpose of managing the PACE program;

(3) "Governmental entity" means a municipality, county, combination of cities or counties or both, or statewide district;

(4) "Owner" means an individual, partnership, association, corporation, or other legal entity that is recognized by law and has title or interest in any real property;

(5) "PACE program" means a property assessed clean energy program under which a real property owner can finance an energy efficiency improvement, a renewable energy project, and a water conservation improvement on the real property; and

(6) "Person" means an individual, partnership, association, corporation, or other legal entity recognized by law as having the power to contract.

History. Acts 2013, No. 1074, § 1.

8-15-103. Legislative findings.

The General Assembly finds that:

(1) It is in the best interests of the state to authorize districts that make available to citizens one (1) or more financing programs, including without limitation a PACE program, to fund energy efficiency improvements, renewable energy projects, and water conservation improvements on residential, commercial, industrial, and other real properties at the request of the owner;

(2) The programs described in subdivision (1) of this section will benefit the citizens of this state by:

(A) Decreasing the cost of providing funds to participating citizens and lowering the aggregate issuance and servicing costs of loans; and

(B) Making funds available to rural communities throughout the state that might not otherwise create and finance the programs described in subdivision (1) of this section; and

(3) The programs described in subdivision (1) of this section will further the public purpose of:

(A) Creating jobs and stimulating the state's economy;

(B) Generating significant economic development through the investment of the proceeds of loans in local communities, including increased sales tax revenue;

(C) Protecting participating citizens from the financial impact of the rising cost of electricity produced from nonrenewable fuels;

(D) Providing positive cash flow in which the costs of the improvements are lower than the energy savings on an average monthly basis;

(E) Providing the citizens of this state with informed choices and additional options for financing improvements that may not otherwise be available;

(F) Increasing the value of the improved real property for participating citizens;

(G) Improving the state's air quality and conserving natural resources, including water;

(H) Attracting manufacturing facilities and related jobs to the state; and

(I) Promoting energy independence and security for the state and the nation.

History. Acts 2013, No. 1074, § 1.

8-15-104. Immunity.

(a) The powers and duties of a district conferred by this chapter are public and governmental functions exercised for a public purpose and for matters of public necessity.

(b) The district and its personnel are immune from suit in tort for the performance of its duties under this chapter unless immunity from tort is expressly waived in writing.

History. Acts 2013, No. 1074, § 1.

8-15-105. Authority to create.

(a) A governmental entity legally authorized to issue general revenue bonds may create a district by adoption of an ordinance.

(b) A combination of governmental entities may create a district by each governmental entity:

(1) Adopting an ordinance that provides for the governmental entity's participation in the district; and

(2) Entering into a joint agreement with one (1) or more other participating governmental entities.

(c) This section shall not limit additional governmental entities from becoming members of the district under § 8-15-106.

History. Acts 2013, No. 1074, § 1.

8-15-106. Membership in an existing district.

(a) To become a member of an existing district, the governing body of a governmental entity shall:

(1) Adopt an ordinance that provides for the participation of the governmental entity in the district; and

(2) Enter into an agreement with the other participating members of the district.

(b) The agreement between members of a district shall establish the terms and conditions of the operation of the district with the limitations provided in this chapter.

History. Acts 2013, No. 1074, § 1.

8-15-107. Board of directors.

(a) A district created under this chapter shall be operated and controlled by a board of directors.

(b) The board of directors shall manage and control each district, including without limitation the operations, business, and affairs of the district.

(c) The board of directors shall be solely responsible for selecting the chair of the board of directors and establishing the procedures by which the board of directors shall operate.

(d) A director shall not receive compensation in any form for his or her services as a director.

(e) Each director shall be entitled to reimbursement by the district for any necessary expenditures incurred in connection with the performance of his or her general duties as a director.

History. Acts 2013, No. 1074, § 1.

8-15-108. Membership on the board of directors.

(a) The board of directors of a district shall consist of at least seven (7) directors.

(b) The board of directors shall include:

(1) For a statewide district, the members specified in the agreement establishing the district;

(2) For a district composed of a combination of one (1) or more counties and one (1) or more cities:

(A) The county judge or his or her designated representative of each county that is a member of the district;

(B) The mayor or his or her designated representative of each city that is a member of the district; and

(C) If the number of directors is fewer than seven (7) after fulfilling the requirements of subdivisions (b)(2)(A) and (B) of this section, additional members shall be appointed as specified in the agreement establishing the district until a total of seven (7) directors has been appointed;

(3) For a district composed of one (1) or more counties:

(A) The county judge or his or her designated representative of each county that is a member of the district; and

(B) If the number of directors is fewer than seven (7) after fulfilling the requirements of subdivision (b)(3)(A) of this section, additional members shall be appointed as specified in the agreement establishing the district until a total of seven (7) directors has been appointed; and

(4) For a district composed of one (1) or more cities:

(A) The mayor or his or her designated representative of each city that is a member of the district; and

(B) If the number of directors is fewer than seven (7) after fulfilling the requirements of subdivision (b)(4)(A) of this section, additional members shall be appointed as specified in the agreement establishing the district until a total of seven (7) directors has been appointed.

(c) The designated representative of a county judge or mayor under subsection (b) of this section shall be a qualified elector of the jurisdiction that the designated representative is appointed to represent.

History. Acts 2013, No. 1074, § 1.

8-15-109. Terms of directors.

(a) A director who is a public official may serve on the board of directors of a district during his or her term of office as the county judge or mayor of a member of a district.

(b) A director who is the designated representative of the mayor or county judge of a member of the district serves at the pleasure of the mayor of the city or the county judge of the county that is a member of the district.

History. Acts 2013, No. 1074, § 1.

8-15-110. District boards of directors — Meetings.

(a) The board of directors of a district shall hold quarterly meetings and special meetings, as needed, in the courthouse or other location within the district.

(b) The time and place of the quarterly meetings shall be on file in the office of the district board of directors.

History. Acts 2013, No. 1074, § 1.

8-15-111. District boards of directors — Powers and duties.

(a) The board of directors of a district may:

(1) Issue revenue bonds on behalf of the district;

(2) Make and adopt all necessary bylaws for its organization and operation;

(3) Elect officers and employ personnel necessary for its operation;

(4) Operate, maintain, expand, and fund a PACE project;

(5) Apply for, receive, and spend grants for any purpose under this chapter;

(6) Enter into agreements and contracts on behalf of the district;

(7) Receive property or funds by gift or donation for the finance and support of the district;

(8) Reimburse a governmental entity for expenses incurred in performing a service for the district;

(9) Assign assessments to a private lending institution; and

(10) Do all things necessary or appropriate to carry out the powers expressly granted or duties expressly imposed under this chapter.

(b) The board of directors shall:

(1) Allow a commission of:

(A) One and five-tenths percent (1.5%) for the extension of district assessments by the county assessor or county clerk;

(B) One and five-tenths percent (1.5%) for the collection of district assessments by the county collector; and

(C) One-eighth percent (0.125%) for services of a county treasurer in disbursing the moneys collected for district assessments; and

(2) Adopt rules consistent with this chapter or with other legislation that in its judgment may be necessary for the proper enforcement of this chapter.

History. Acts 2013, No. 1074, § 1.

8-15-112. Reporting requirement — Collection of assessments.

(a)(1)(A) By March 1 of each year or upon the creation of a district that uses or intends to use the county collector for collection of district assessments shall file an annual report with the county clerk in any county in which a portion of the district is located.

(B) The annual report required under this section shall be available for inspection and copying by assessed landowners in the district.

(C) The county clerk shall not charge any costs or fees for filing the annual report required under this section.

(D) The district shall deliver a filed copy of the annual report required under this section to the county collector within five (5) days of filing.

(2) The annual report required under this section shall contain the following information as of December 31 of the current calendar year:

(A) A list of contracts, identity of the parties to the contracts, and obligations of the district;

(B) Any indebtedness, including bonded indebtedness, and the reason for the indebtedness, including the following:

(i) The stated payout or maturity date of the indebtedness, if any; and

(ii) The total existing delinquent assessments and the party responsible for the collection;

(C) Identification of each member of the board of directors of the district and each member's contact information;

(D) The date, time, and location for any scheduled meeting of the district for the following year;

(E) The contact information for the district assessor;

(F) Information concerning to whom the county treasurer is to pay district assessments;

(G) An explanation of the applicable statutory penalties, interest, and costs;

(H) The method used to compute district assessments; and

(I) A statement itemizing the income and expenditures of the district, including a statement of fund and account activity for the district.

(b)(1) A district that does not comply with subsection (a) of this section commits a violation punishable by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense.

(2) A fine recovered under subdivision (b)(1) of this section shall be deposited into the county clerk's cost fund.

(c)(1) On or before December 31, the district shall file its list of special assessments for the following calendar year with the county clerk.

(2)(A) After filing the list of special assessments under subdivision (c)(1) of this section, the district shall deliver a copy of the filed list of special assessments to the preparer of the tax books.

(B) If the county collector is not the designated preparer of the tax books, the district shall deliver a copy of the filed list of special assessments to the county collector.

(3) The list of special assessments required under subdivision (c)(1) of this section shall contain:

(A) A list of each parcel with an assessment levied against it within the district; and

(B) The contact information for the district assessor.

(4) The list of special assessments required under subdivision (c)(1) of this section shall not include assessments on parcels that otherwise would not appear on the tax books for the following year.

(5) After the December 31 deadline to file the list of special assessments required under subdivision (c)(1) of this section, the county collector may reject an assessment submitted by the district for inclusion in the list of special assessments.

(d)(1) After the district files the list of special assessments required under subsection (c) of this section, the county collector shall collect the assessments at the same time the county collector collects the other taxes on the property.

(2) The county collector shall pay the funds collected under subdivision (d)(1) of this section to the county treasurer at the same time that the county collector pays all other taxes to the county treasurer.

(3) The county treasurer shall distribute the funds received under subdivision (d)(2) of this section to the district in the same manner as he or she distributes funds to other tax entities.

History. Acts 2013, No. 1074, § 1.

8-15-113. Financing projects.

(a) A district may establish a PACE program to provide loans for the initial acquisition and installation of energy efficiency improvements, renewable energy projects, and water conservation improvements with consenting real property owners of existing real property and new construction.

(b)(1) The district may authorize by resolution the issuance of bonds or the execution of a contract with a governmental entity or a private entity to provide the loans under subsection (a) of this section.

(2) The resolution shall include without limitation the following:

(A) The type of renewable energy project, water conservation improvement, or energy efficiency improvement for which the loan may be offered;

(B) The proposed arrangement for the loan program, including without limitation:

(i) A statement concerning the source of funding that will be used to pay for work performed under the loan contract;

(ii) The interest rate and time period during which contracting real property owners would repay the loan; and

(iii) The method of apportioning all or any portion of the costs incidental to the financing, administration, and collection of the arrangement among the consenting real property owners and the governmental entity;

(C) A minimum and maximum aggregate dollar amount that may be financed per property;

(D)(i) A method for prioritizing requests from real property owners for financing if the requests appear likely to exceed the authorization amount of the loan program.

(ii) Priority shall be given to those requests from real property owners that meet the eligibility requirements on a first-come, first-served basis;

(E) Identification of a local official authorized to enter into loan contracts on behalf of the district; and

(F) A draft contract specifying the terms and conditions proposed by the district.

(c)(1) The district may combine the loan payment required by the loan contract with the billing for the real property tax assessment for the real property where the renewable energy project, water conservation improvement, or the energy efficiency improvement is installed.

(2) The district may establish the order in which a loan payment will be applied to the different charges.

(3) The district may not combine the billing for a loan payment required by a contract authorized under this section with a billing of

another county or political subdivision unless the county or political subdivision has given its consent by a resolution or ordinance.

(d) The district shall offer private lending institutions the opportunity to participate in local loan programs established under this section.

(e)(1)(A) In order to secure a loan authorized under this section, the district may place a lien equal in value to the loan against any real property where the renewable energy project, water conservation improvement, or the energy efficiency improvement is installed.

(B) The lien shall attach to the real property when it is filed in the county recorder's office for record.

(2)(A)(i) The priority of the lien created under this chapter is determined based on the date of filing of the lien.

(ii) Except as provided in subdivision (e)(2)(A)(iii) of this section, the priority of the lien shall be determined in the same manner as the priority for other real property tax and assessment liens.

(iii) A lien created under this chapter shall be subordinate to any real or personal property tax liens.

(iv) A district shall discharge the lien created under this chapter upon full payment of the lien.

(B) If the real property is sold, the lien shall stay attached to the real property, and the loan created under this chapter will be owed by the new real property owner.

(C) If the real property enters into default or foreclosure:

(i) Payment of the assessment shall not be sought from a member of the district who does not own the real property that entered into default or foreclosure;

(ii) Repayment of the assessment shall not be accelerated automatically; and

(iii) The balance of the assessment shall be repaid according to the terms of the agreed-upon schedule.

(3) The district may bundle or package the loans for transfer to private lenders in a manner that would allow the liens to remain in full force to secure the loans.

(f)(1) Before the enactment of an ordinance under this section, a public hearing shall be held at which interested persons may object to or inquire about the proposed loan program or any of its particulars.

(2) The public hearing shall be advertised one (1) time per week for two (2) consecutive weeks in a newspaper of general circulation in the district.

History. Acts 2013, No. 1074, § 1.

8-15-114. Program guidelines.

The board of directors, together with any third-party administrator it may select, shall determine:

(1) The guidelines of the PACE program, including without limitation that:

(A) The base energy performance evaluation shall be completed by a certified and qualified energy evaluation professional to determine existing energy use and options for improved energy efficiency;

(B) The approved improvements create a positive cash flow;

(C) Work shall be performed by qualified and certified contractors in the field of energy efficiency and methods of renewable energy installation;

(D) Performance testing and verification shall be performed by a qualified professional after the work is completed;

(E) Adequate consumer protections are in place; and

(F) The applicable underwriting standards for the participants in the program are established;

(2) The qualifications of the vendors performing installations under this chapter;

(3) The mechanisms by which the district will remit the received special assessment payments and any cost reimbursement; and

(4) Any other matters necessary to implement and administer the PACE program.

History. Acts 2013, No. 1074, § 1.

8-15-115. Payment by special assessments.

The credit and taxing power of the State of Arkansas will not be pledged for the debt evidenced by the bonds, which will be payable solely from the revenues received from the special assessments on the participants' real property under this chapter.

History. Acts 2013, No. 1074, § 1.

8-15-116. Bonds.

(a) A district may:

(1) Issue bonds to provide the PACE program loans authorized by this chapter; and

(2) Create a debt reserve fund of legally available moneys from nonstate sources as partial security for the bonds.

(b) Bonds issued under this chapter and income from the bonds, including any profit made on the sale or transfer of the bonds, are exempt from taxation in this state.

(c) Bonds issued under this chapter shall:

(1)(A) Be authorized by a resolution of the board of directors.

(B) The authorizing bond resolution may contain any terms, covenants, and conditions that the board of directors deems to be reasonable and desirable; and

(2) Have all of the qualities of and shall be deemed to be negotiable instruments under the laws of the State of Arkansas.

History. Acts 2013, No. 1074, § 1.

8-15-117. Sale.

The bonds may be sold in such a manner, either at public or private sale, and upon such terms as the board of directors of a district shall determine to be reasonable and expedient for effectuating the purposes of this chapter.

History. Acts 2013, No. 1074, § 1.

8-15-118. Revolving fund.

(a) A district may maintain a revolving fund to be held in trust by a banking institution chosen by the board of directors separate from any other funds and administered by the board of directors.

(b) A district may transfer into its revolving fund money from any permissible source, including:

(1) Bond revenues;

(2) Contributions; and

(3) Loans.

History. Acts 2013, No. 1074, § 1.

8-15-119. Notice to mortgage lender.

At least thirty (30) days before the execution of an agreement with a district, an owner shall provide written notice to each mortgage lender holding a lien on the owner's property of the owner's application to participate in a PACE program.

History. Acts 2013, No. 1074, § 1.